

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matter of )  
 )  
Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations. )  
(Richlands, Shallotte, Topsail Beach, )  
Wrightsville Beach, La Grange, and )  
Swansboro, North Carolina<sup>1</sup> )  
 )

MB Docket No. 05-16  
RM-11143

RECEIVED

SEP 19 2005

To: Office of the Secretary  
Attention: Assistant Chief, Audio Division, Media Bureau

Federal Communications Commission  
Office of Secretary

RESOLUTION OF RULEMAKING PROCEEDING

Sea-Comm, Inc. ("Sea-Comm") and Conner Media Corporation ("Conner"), by their respective undersigned attorneys, hereby advise the Commission of a development that serves fully to resolve this proceeding. As noted below, Sea-Comm has unilaterally decided to consent to Conner's counterproposal, thereby enabling the Commission to implement the full realm of public-interest benefits under consideration herein.

Sea-Comm and Conner are the only parties to this proceeding. Sea-Comm filed the initial Petition for Rulemaking that resulted in issuance of the *Notice of Proposed Rulemaking* ("NPRM") herein, 20 FCC Rcd. 1282 (Ass't. Chief, Audio Division, Media Bureau, 2005). Conner was the only party to have filed a counterproposal. Sea-Comm filed comments in support of the NPRM, but no other entity filed comments or otherwise attempted to participate in any way.

<sup>1</sup> The communities of La Grange and Swansboro, North Carolina have been added to the caption, for the reasons explained in the text.

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Sea-Comm's petition proposed the following changes in three of its stations: (a) WBNU would move from Channel 279C3 at Shallotte, North Carolina to Channel 279C2 at Wrightsville Beach, North Carolina; (b) WBNE would move from Channel 229A at Wrightsville Beach, North Carolina to Channel 229C3 at Topsail Beach, North Carolina; and (c) WWTB would move from Channel 280C3 at Topsail Beach, North Carolina to Channel 281A at Richlands, North Carolina.

Conner's counterproposal sought identical relief, except that WWTB would move to the more populous unserved community of Swansboro in lieu of Richlands. That, in turn, would enable Conner's WZUP(FM), La Grange, North Carolina to effect a significant upgrade in its facilities from Class C3 to Class C2.

The proposed changes are summarized as follows:

City	Present	Sea-Comm Proposal	Conner Counterproposal
Shallotte, NC	279C3, 292A	292A	292A
Topsail Beach, NC	280C3	229C3	229C3
Wrightsville Beach, NC	229A	279C2	279C2
Richlands, NC	-----	281A	-----
Swansboro, NC	-----	-----	281A
La Grange, NC	284C3	-----	284C2

As asserted in Conner's counterproposal, and as confirmed in Sea-Comm's own technical comments submitted herewith, the relief requested in the counterproposal would substantially advance the public interest. Stations WBNU, WBNE and WZUP would all significantly increase the populations they would be authorized to serve. Although WWTB would downgrade from

Class C3 to Class A, the loss area is all well served and would constitute a mere fraction of the net gain area from the other proposals.

Looked at another way, the communities of Topsail Beach, Wrightsville Beach, and La Grange will receive upgraded service from their respective local stations and the city of Swansboro will obtain its first local outlet for expression, benefits which clearly offset the loss of a station licensed to Shallotte (which will remain served by two separately-owned, and hence competing, stations).

In its March 21, 2005 Comments and Counterproposal, Conner provided a "*Tuck*" showing to demonstrate that, while part of the Jacksonville, North Carolina Urbanized Area, Swansboro is sufficiently independent so as to warrant its own first local transmission service.

Although Sea-Comm and Conner had vigorously contested each other's claims on both procedural and substantive grounds, Sea-Comm recently advised Conner, through counsel, that it has re-evaluated its position and now supports the counterproposal. Sea-Comm's decision was unilateral and did not result from any negotiations or discussions between the parties or their counsel or representatives. No consideration, monetary or otherwise, direct or indirect, has been paid or promised to induce Sea-Comm's action.

Submitted herewith are the following supporting documents:

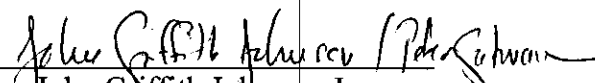
- A set of Sea-Comm's technical comments prepared by Graham Brock, Inc. affirming compliance with Commission protection and coverage rules, documenting the availability of a usable site at Swansboro and summarizing the public interest benefits of the counterproposal, which Sea-Comm is now prepared to accept.
- A declaration under penalty of perjury of Sea-Comm's vice president confirming its acceptance of Conner's counterproposal, affirming that its consent is unilateral, disavowing any agreement or consideration, and stating that upon grant of the relief requested in the counterproposal it will apply for appropriate authorizations to implement the required changes in WWTB's facilities.

- A declaration under penalty of perjury of Conner's president confirming that no negotiation occurred, agreement was reached or consideration paid or promised with Sea-Comm. (In its Comments and Counterproposal, Conner had previously stated its intention to apply for the proposed new Swansboro station and to implement the WZUP upgrade.)

In view of the foregoing, Sea-Comm and Conner jointly request the Commission to resolve this docket by granting the relief requested in Conner's counterproposal. Upon the grant of such relief, all other pending pleadings may be dismissed without further consideration, thereby accelerating the service benefits to be made available to the public and saving the parties and the Commission the need to devote further resources to this matter.

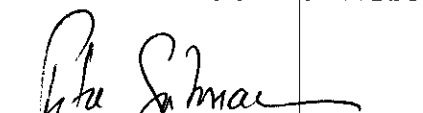
Respectfully Submitted,

**SEA-COMM, INC.**

By   
John Griffith Johnson, Jr.  
Its Attorney

**Paul, Hastings, Janofsky & Walker, LLP**  
875 15th Street, N.W.  
Washington, DC 20005  
(202) 551-1724

**CONNER MEDIA CORPORATION**

By   
Peter Gutmann  
Its Attorney

**Womble Carlyle Sandridge & Rice, PLLC**  
1401 I Street, NW, Seventh Floor  
Washington, DC 20005  
(202) 857-4532

September 19, 2005

## DECLARATION

My name is M.E. Knight. I am the Vice President of Sea-Comm, Inc. ("Sea-Comm") and I serve as the General Manager of Sea-Comm's FM radio stations in the Wilmington, North Carolina market. I have held those positions at all times relevant to the matters discussed in this Declaration.

The statements made in this Declaration are made on the basis of my own personal knowledge and belief, except to the extent that they are based upon documents that I have reviewed and believe to be authentic and accurate or upon matters of record before the Federal Communications Commission (the "FCC").

On April 12, 2004, Sea-Comm petitioned the FCC to amend its Table of Allotments for FM Broadcast Stations ("Table of Allotments") by changing (i) the channels, (ii) the channel classifications, and/or (iii) the communities to which such channels are currently allotted, for the channel allotments upon which three of Sea-Comm's stations operate. One of those stations is WWTB, currently licensed to operate on Channel 280C3 in Topsail Beach, North Carolina. Sea-Comm's petition requested the Commission to initiate a public-notice-and-comment rule making proceeding in order to amend the Table of Allotments by, among other things, downgrading WWTB's channel allotment from Channel 280C3 to Channel 281A and by re-allotting the downgraded channel from Topsail Beach, North Carolina to Richlands, North Carolina.

The FCC accepted Sea-Comm's petition and in January of 2005 issued a Notice of Proposed Rule Making ("NPRM") in MB Docket No. 05-16 (RM-11,143) that was consistent with Sea-Comm's petition. Sea-Comm timely filed comments on March 10, 2005 in support of the proposals in the NPRM.

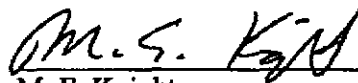
Conner Media Corporation ("Conner"), the licensee of FM radio station WZUP in LaGrange, North Carolina, filed comments and a counterproposal in MB Docket No. 05-16. Conner's counterproposal was consistent with Sea-Comm's petition and with the NPRM in all respects, except that Conner counterproposed that the downgraded allotment of WWTB's channel on Channel 281A be re-allotted from Topsail Beach to Swansboro, North Carolina, in lieu of a re-allotment of the downgraded channel to Richlands.

Initially, Sea-Comm opposed Conner's counterproposal in a series of filings with the FCC in MB Docket No. 05-16. More recently, however, Sea-Comm has re-evaluated its position and now accepts, and concurs in, Conner's counterproposal. In the event that the FCC shall downgrade WWTB's Channel 280C3 allotment at Topsail Beach to Channel 281A and shall further re-allot the downgraded channel to Swansboro, Sea-Comm will promptly apply to the FCC for the appropriate authorizations to conform

WWTB's facilities to such changes, and – if such authorizations are granted – Sea-Comm promptly will effectuate those changes in accordance with those authorizations.

Sea-Comm does not have any agreement, written or otherwise, with Conner or with any other person or entity respecting the fact that Sea-Comm has elected unilaterally to consent to Conner's counterproposal. Neither Sea-Comm nor any of its principals have been promised or paid, or otherwise received, nor will Sea-Comm or any of its principals receive in the future, any money or other form of consideration for the fact that Sea-Comm has elected unilaterally to consent to Conner's counterproposal.

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on this thirtieth day of August, 2005.

  
M. E. Knight

# GRAHAM BROCK, INC.

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BROADCAST TECHNICAL CONSULTANTS

**TECHNICAL COMMENTS**

**SEA-COMM, INC.**

**RE-ALLOT CHANNEL 279C2**

**WRIGHTSVILLE BEACH, NORTH CAROLINA**

**RE-ALLOT CHANNEL 281A**

**SWANSBORO, NORTH CAROLINA**

**RE-ALLOT CHANNEL 229C3**

**TOPSAIL BEACH, NORTH CAROLINA**

**August 2005**

**TECHNICAL EXHIBIT**

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**TECHNICAL COMMENTS**  
**SEA-COMM. INC.**  
**RE-ALLOT CHANNEL 279C2**  
**WRIGHTSVILLE BEACH, NORTH CAROLINA**  
**RE-ALLOT CHANNEL 281A**  
**SWANSBORO, NORTH CAROLINA**  
**RE-ALLOT CHANNEL 229C3**  
**TOPSAIL BEACH, NORTH CAROLINA**  
**August 2005**

**TECHNICAL STATEMENT**

1. This technical statement and attached exhibits have been prepared on behalf of Sea-Comm, Inc. ("SCI"), licensee of WBNU, Channel 279C3, Shallotte, North Carolina; WBNE, Channel 229A, Wrightsville Beach, North Carolina; and WWTB, Channel 280C3, Topsail Beach, North Carolina. SCI is the Petitioner in MB Docket #05-16. SCI has requested the following changes to the Commission's Table of FM Allotments, §73.202(b) of the rules: the upgrade of WBNU to Channel 279C2 and the re-allotment of the upgraded channel to Wrightsville Beach, North Carolina; the downgrade of WWTB to Channel 281A and the re-allotment of the downgraded channel to Richlands, North Carolina; and the upgrade of WBNE to Channel 229C3 and the re-allotment of the upgraded channel to Topsail Beach, North Carolina.

2. During the comment period in this docket, Conner Media Corporation ("CMC") requested the upgrade of its station WZUP, LaGrange, North Carolina from Channel 284C3 to Channel 284C2. This upgrade is mutually exclusive with the SCI request at Richlands. CMC



requested that in lieu of the Channel 281A allotment to Richlands, that Channel 281A be allotted to Swansboro, North Carolina. In an effort to conclude this proceeding, SCI accepts the allotment of Channel 281A at Swansboro, North Carolina, rather than at Richlands.

3. At the CMC proposed site for Swansboro, North Carolina at North Latitude 34° 42' 41" and West Longitude 77° 16' 07", Channel 281A meets the Commission's minimum distance separation requirements to all licensed, applied-for or proposed facilities (with the exception of the licensed WWTB, Topsail Beach, North Carolina), as indicated on Exhibit #1. Exhibit #2 is a map depicting where a transmitter site for Channel 281A at Swansboro can be located and meet the Commission's rules. From the reference site, the requisite 70 dBu contour will be placed over all of Swansboro, North Carolina.<sup>1</sup>

4. Therefore, SCI herein requests the following changes in §73.202(b) of the Commission's rules:

**Shallotte, North Carolina**

Present	Proposed
279C3, 292A	292A

**Wrightsville Beach, North Carolina**

Present	Proposed
229A	279C2

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1) A gain and loss area analysis for the proposed Swansboro allotment was submitted with the CMC filing. Both the gain and loss areas, as a result of the move of WWTB from Topsail Beach to Swansboro, will receive five or more existing services and are, therefore, considered adequately served.

### **Topsail Beach, North Carolina**

Present  
280C3

Proposed  
229C3

### **Swansboro, North Carolina**

Present  
None

Proposed  
281A

### **PUBLIC INTEREST**

5. The public interest aspects of the SCI proposal were originally outlined in its submission to the Commission. However, with the alternate community of Swansboro being proposed, this portion of the submission has been updated. WWTB, operating on Channel 281A at Swansboro, North Carolina, will provide 60 dBu (1.0 mV/m) service to 148,252 persons in 2,516.1 square kilometers.<sup>2</sup> The WWTB relocation will create a gain area of 21,494 persons in 1,102.7 square kilometers. There will also be a loss area in which there are 34,153 persons in 3,174.8 square kilometers. Both the gain and loss areas are presently receiving service from a minimum of five full-time services. This proposal will provide a first local service to Swansboro, North Carolina, based on the so-called "Tuck" analysis submitted by CMC in its initial comments.<sup>3</sup> SCI will submit a FCC Form 301 application to implement the change in community of license for WWTB (as well as the other requested changes).

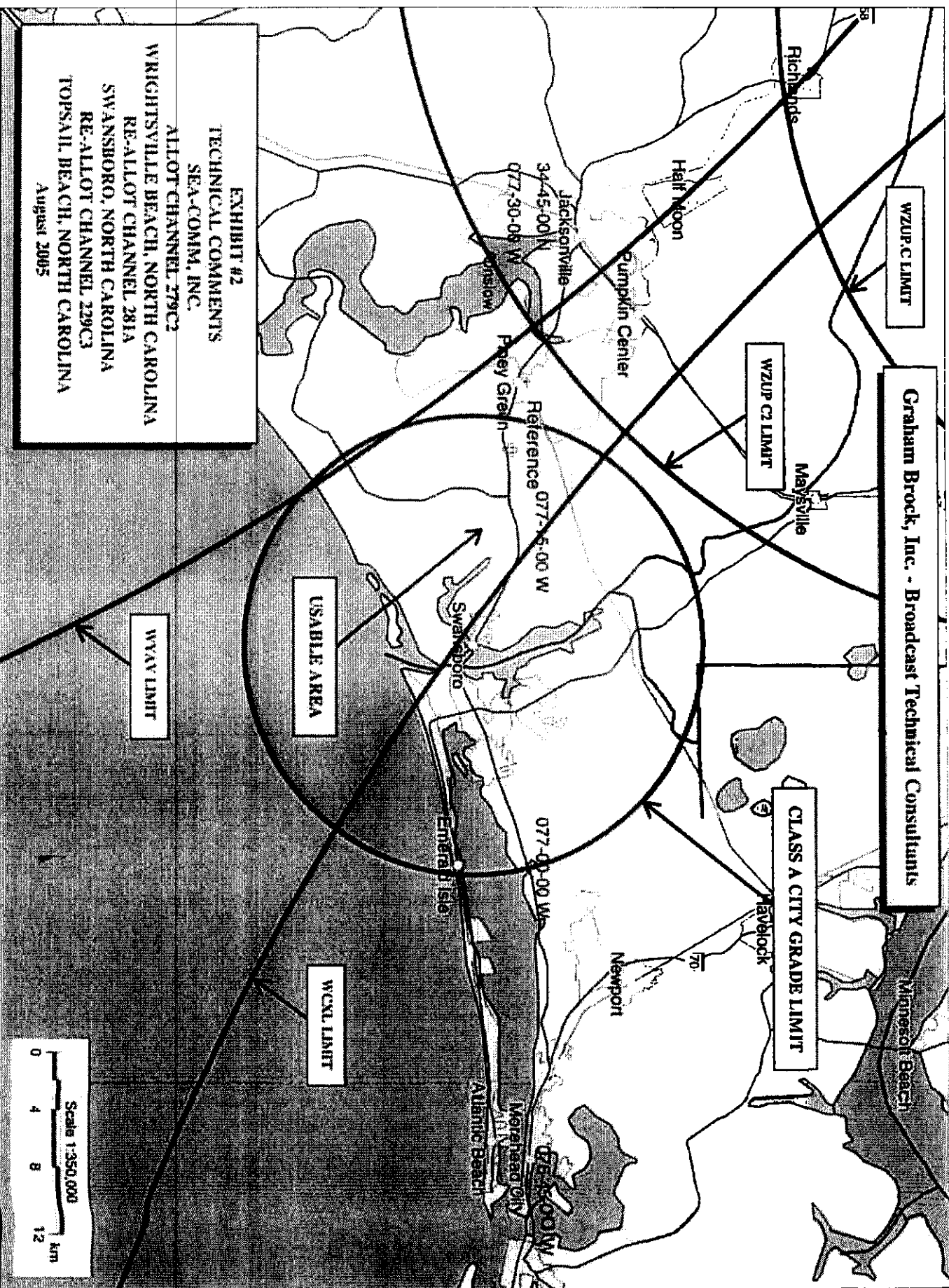
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2) The licensed WWTB provides 60 dBu service to 160,911 persons in 4,588.2 square kilometers.

3) The CMC comments indicated Swansboro is an independent community, separate from the Jacksonville, North Carolina Urbanized Area.

6. The foregoing technical statement was prepared on behalf of Sea-Comm, Inc., by Graham Brock, Inc., its Technical Consultants. All data related to FM facilities were extracted from the CDBS database and all population data were extracted from the 2000 census database. We assume no liability for errors or omissions in those databases that may be adverse to the requests contained herein.

Call	Channel Lat.	Location Lng.	Ant	Power	Azi	Dist HAAT	FCC	Margin
RADD	ADD 281A 34 42 41	Svansboro 77 16 07		NC 6.000 kW	0.0	0.00 100 M	115.0	-115.00
	Sea-Comm, Inc.							
RDEL	DEL 280C3 34 29 38	Topsail Beach 77 29 18		NC 25.000 kW	219.8	31.43 100 M	89.0	-57.57
	Conner Media Corporation							
WWTB	LIC-N 280C3 34 29 38	Topsail Beach 77 29 18	NCN	NC 21.500 kW	219.8	31.43 100 M	89.0	-57.57
	Sea-Comm, Inc. BLH-19930920KF							
WCXL	LIC 281C1 36 08 08	Kill Devil Hills 75 49 28	CX	NC 100.000 kW	39.2	205.34 296 M	200.0	5.34
	Max Radio Of The Carolinas BLH-20040324AER							
WYAV	LIC 281C1 33 35 27	Myrtle Beach 79 02 55	CN	SC 100.000 kW	233.2	205.90 299 M	200.0	5.90
	NM Licensing, LLC BLH-19980731KA							
RADD	ADD 284C2 35 07 39	La Grange 77 42 59		NC 50.000 kW	318.7	61.68 150 M	55.0	6.68
	Conner Media Corporation							
RDEL	DEL 284C3 35 07 39	La Grange 77 42 59		NC 25.000 kW	318.7	61.68 100 M	42.0	19.68
	Conner Media Corporation							
WZUP.C	CP 284C3 35 15 31	La Grange 77 36 33	CX	NC 18.200 kW	333.1	68.20 76 M	42.0	26.20
	Conner Media Corporation BMFH-20050204ACU							
WFXK	LIC 282C1 36 02 22	Tarboro 78 03 44	CN	NC 100.000 kW	334.3	164.04 299 M	133.0	31.04
	Radio One Licenses, LLC BLH-19900209KD							
WZUP	LIC-N 284A 34 51 48	Rose Hill 78 02 16	NCN	NC 2.800 kW	283.7	72.38 78 M	31.0	41.38
	Conner Media Corporation BLH-19930128KB							
RADD	ADD 279C2 33 59 56	Wrightsville Beach 77 54 35		NC 50.000 kW	216.8	98.61 150 M	55.0	43.61
	Conner Media Corporation							



WZUP C1 LIMIT

Graham Brock, Inc. - Broadcast Technical Consultants

CLASS A CITY GRADE LIMIT

USABLE AREA

WVAV LIMIT

WCXL LIMIT

EXHIBIT #2  
 TECHNICAL COMMENTS  
 SEA-COMM, INC.  
 ALLOT CHANNEL 279C2  
 WRIGHTSVILLE BEACH, NORTH CAROLINA  
 RE-ALLOT CHANNEL 281A  
 SWANSBORO, NORTH CAROLINA  
 RE-ALLOT CHANNEL 229C3  
 TOPSAIL BEACH, NORTH CAROLINA  
 August 2005

Scale 1:350,000  
 0 4 8 12 km

**AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT**

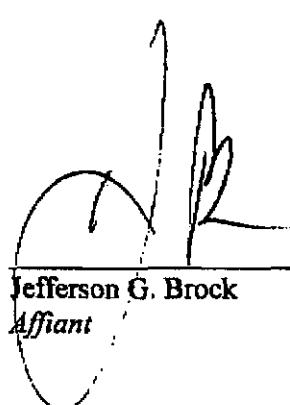
State of Georgia )  
St. Simons Island ) ss:  
County of Glynn )

**JEFFERSON G. BROCK**, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by Sea-Comm, Inc., to prepare the attached Technical Exhibit.

His qualifications are a matter of record before the Federal Communications Commission. He has been active in Broadcast Engineering since 1979.


The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

*This the 10th day of August, 2005.*



Jefferson G. Brock  
Affiant

*Sworn to and subscribed before me  
this the 10th day of August, 2005*



Notary Public, State of Georgia  
My Commission Expires: September 3, 2007

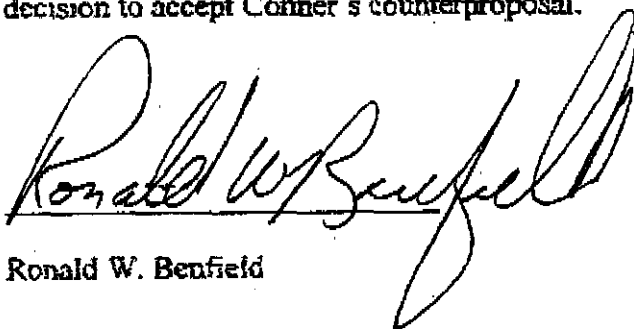
## DECLARATION UNDER PENALTY OF PERJURY

Ronald W. Benfield states under penalty of perjury that the following is true and correct of his personal knowledge and belief:

1. I am President and 100% owner of Conner Media Corporation ("Conner"), the sole counterproponent in MB Docket No. 05-16.

2. I understand that Sea-Comm, Inc ("Sea-Comm"), the proponent in MB Docket No. 05-16, has re-evaluated its position and now accepts and concurs in Conner's counterproposal therein. This development was not the result of any negotiation or discussion with Conner, me or any representative of Conner. There is no agreement with Sea-Comm with respect to this matter, and to the best of my knowledge this development constitutes the unilateral action of Sea-Comm.

3. Neither Conner nor, to my knowledge, any other party has paid or promised any money or other consideration to Sea-Comm, directly or indirectly, now or in the future, with respect to Sea-Comm's decision to accept Conner's counterproposal.



Ronald W. Benfield

September 19, 2005